

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 GAREN PEARSON,

4 Plaintiff

5 v.

6 JAMES E. DZURENDA,

7 Defendants

Case No.: 3:19-cv-00031-MMD-WGC

Order

Re: ECF No. 59, 66

9 Defendants filed a motion for leave to file Exhibits K and W under seal in support of
10 their motion for summary judgment. (ECF No. 59.) Exhibit K is Plaintiff's offender information
11 summary. Exhibit W is a declaration by defendant Olivas. For unknown reasons, Defendants
12 then filed another motion seeking leave to file Exhibit K under seal in support of their motion for
13 summary judgment. (ECF No. 66.) Plaintiff did not oppose either motion.

14 "Historically, courts have recognized a general right to inspect and copy public records
15 and documents, including judicial records and documents." *Kamakana v. City and County of*
16 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted).
17 "'Throughout our history, the open courtroom has been a fundamental feature of the American
18 judicial system. Basic principles have emerged to guide judicial discretion respecting public
19 access to judicial proceedings. These principles apply as well to the determination of whether to
20 permit access to information contained in court documents because court records often provide
21 important, sometimes the only, bases or explanations for a court's decision.'" *Oliner v.*
22 *Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp.*
23 *v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

1 Documents that have been traditionally kept secret, including grand jury transcripts and
2 warrant materials in a pre-indictment investigation, come within an exception to the general right
3 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of
4 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The
5 presumption of access is 'based on the need for federal courts, although independent—indeed,
6 particularly because they are independent—to have a measure of accountability and for the
7 public to have confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler*
8 *Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016)
9 (quoting *United States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley*
10 *Broad Co. v. U.S. Dist. Ct., D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

11 There are two possible standards a party must address when it seeks to file a document
12 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,
13 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only
14 when it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without
15 relying on hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must
16 "'conscientiously balance[] the competing interests of the public and the party who seeks to keep
17 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the
18 sound discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599
19 (1978)). "Examples include when a court record might be used to 'gratify private spite or
20 promote public scandal,' to circulate 'libelous' statements, or 'as sources of business information
21 that might harm a litigant's competitive standing.'" *Id.*

22 The good cause standard, on the other hand, is the exception to public access that has
23 been typically applied to "sealed materials attached to a discovery motion unrelated to the merits

1 of the case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which
2 governs the issuance of protective orders in the discovery process: The court may, for good
3 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or
4 undue burden or expense.'" *Id.*

5 The Ninth Circuit has clarified that the key in determining which standard to apply is
6 whether the documents proposed for sealing accompany a motion that is "more than tangentially
7 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the
8 compelling reasons standard is applied. If not, the good cause standard is applied.

9 Here, Defendants seek to file exhibits under seal in connection with a motion for
10 summary judgment. This is more than tangentially related to the merits of a case; therefore, the
11 compelling reasons standard applies.

12 Aside from the duplicitous nature of the second motion to seal Exhibit K, the motions
13 seek to file Exhibits K and W under seal while citing authority which has approved the filing of
14 *medical records* under seal.

15 The court nevertheless finds that compelling reasons exist for sealing Exhibit K,
16 Plaintiff's offender information summary. That exhibit contains a variety of sensitive
17 information about Plaintiff's housing assignments in prison, his background, his disciplinary
18 history, investigations and other information that could be detrimental to Plaintiff or others if
19 publicly released. Therefore, Defendants' first motion to seal (ECF No. 59) is **GRANTED** with
20 respect to Exhibit K, which shall remain sealed.

21 The court does not find that compelling reasons exist for sealing Exhibit W, Olivas'
22 declaration. Defendants' reason for sealing the declaration is that it discusses Plaintiff's
23 underlying offense and his correspondence with a former inmate. Plaintiff's offense, as well as

1 that of Mr. Mead, is a matter of public record and is easily obtained by doing an NDOC inmate
2 search. Moreover, Defendants' motion itself discusses Plaintiff's offense and his correspondence
3 with Mr. Mead. Therefore, Defendants' motion to seal Exhibit W is **DENIED**, and Exhibit W
4 shall be **UNSEALED**.

5 Defendants' second motion to seal Exhibit K (ECF No. 66) is **DENIED AS MOOT**.
6 **IT IS SO ORDERED.**

7 Dated: December 8, 2021

8 

9 William G. Cobb
United States Magistrate Judge